

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Amendment of Parts 73 and 74 of the)
Commission's Rules to Establish Rules for Digital)
Low Power Television, Television Translator, and)
Television Booster Stations and to Amend Rules for)
Digital Class A Television Stations)

MB Docket No. 03-185

To: The Commission

COMMENTS OF THE RURAL 700 MHz BAND LICENSEES

Submitted by:

Harold Mordkofsky
John A. Prendergast
D. Cary Mitchell

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830

Dated: November 25, 2003

SUMMARY

In brief, the Rural 700 MHz Band Licensees support the Commission's efforts to promote the availability of digital TV ("DTV") service to rural America and to further progress in the transition to nationwide DTV service. However, in so doing, the Commission must not license any new digital LPTV stations in the Lower 700 MHz Band. Allowing new digital licensees in the LPTV Service or expanded LPTV operations of any type in the Lower 700 MHz Band, even with secondary spectrum user status, would (1) conflict with the policies that led the Commission to use MSA/RSA licensing for a significant portion of the Lower 700 MHz Band as a way to maximize opportunities for small businesses and rural telephone companies and to ensure the rapid deployment of advanced telecommunications services to all Americans; (2) conflict with the Commission's direct warnings that LPTV operators in the Lower 700 MHz Band must be prepared to cease operations once television Channels 52-59 are reclaimed; (3) unfairly restrict the ability of new Lower 700 MHz Band licensees to provide new services and to take advantage of potential spectrum leasing opportunities in the secondary market as permitted under the Commission's Rules, after these licensees paid for their spectrum at auction; and (4) create public frustration and stranded investment, by encouraging LPTV incumbents and new licensees to expend significant resources and effort to construct digital low-power broadcast facilities, when LPTV operations can be forced to shut down or relocate to another channel on relatively short notice. The creation of this "squatter" situation would be unsound public policy, and would make it that much more difficult for the nascent 700 MHz auction winners to bring new services to the public.

Instead, the Rural 700 MHz Band Licensees believe that the Commission can best promote the availability of digital TV in rural America by adopting policies and rules that encourage full power broadcasters in all markets to complete their transition to DTV at the earliest possible date. Digital LPTV operations should be restricted to "core" broadcast channels (channels 2-51), and then, only if the FCC and full-power broadcasters can be certain that such LPTV operations will not impede or delay the DTV transition. Clearing the entire 700 MHz band (698-806 MHz) of all full power and low power broadcasters, in rural as well as urban markets, should be the Commission's first priority if it is seeking to promote the benefits of advanced wireless services and digital TV to rural America.

TABLE OF CONTENTS

| | |
|---|----|
| SUMMARY | i |
| TABLE OF CONTENTS | ii |
| I. STATEMENT OF INTEREST..... | 3 |
| II. THE FCC MUST NOT LICENSE NEW DIGITAL LPTV STATIONS OR PERMIT EXPANDED DIGITAL LPTV OPERATIONS IN THE LOWER 700 MHz BAND | 4 |
| a. <i>The Commission’s Digital LPTV Proposals are Based on a Faulty Premise that New Wireless and Other Primary Services Are Not Expected to Operate in Rural Areas in the Near Future</i> | 5 |
| b. <i>Allowing New Digital Licensees in the LPTV Service or Expanded LPTV Operations of Any Type on Television Channels 52-59 Would Be Inconsistent with the FCC’s Warnings to LPTV Licensees About the Dangers of Continued Operations in the Band</i> | 10 |
| c. <i>Secondary Licensing of Lower 700 MHz Band Spectrum Would Interfere with the Business Plans of Primary Licensees and Restrict Their Ability to Fully Utilize Their Spectrum</i> | 11 |
| d. <i>Allowing New Digital Licensees in the LPTV Service or Expanded LPTV Operations of Any Type on Television Channels 52-59 would be Unsound Public Policy</i> | 13 |
| III. THE FCC SHOULD NOT LICENSE DIGITAL LPTV LICENSES BY AUCTIONS IN THE LOWER 700 MHz BAND | 14 |
| IV. THE FCC SHOULD NOT LICENSE ANY LPTV FACILITIES IN THE CORE SPECTRUM IF THIS WILL DELAY THE FULL-POWER DTV TRANSITION | 15 |
| V. CONCLUSION | 16 |

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Amendment of Parts 73 and 74 of the)
Commission's Rules to Establish Rules for Digital)
Low Power Television, Television Translator, and)
Television Booster Stations and to Amend Rules for)
Digital Class A Television Stations)
_____)

MB Docket No. 03-185

To: The Commission

COMMENTS OF THE RURAL 700 MHz BAND LICENSEES

The Rural 700 MHz Band Licensees, by their attorneys, hereby submit these comments in response to the August 2003 *Notice of Proposed Rule Making* issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned docket.¹ The rural telephone companies, cooperatives, entrepreneurs and rural telco subsidiary companies that comprise the "Rural 700 MHz Band Licensees" are listed in Attachment A hereto.

The *Digital LPTV NPRM* seeks comment on a wide range of legal, technical and policy issues related to the digital conversion and new authorization of stations in the Low Power Television Service ("LPTV Service"), including LPTV stations, TV translator stations and TV booster stations. Among its proposals, the FCC has asked for comment on its proposal to allow digital low power operations on TV channels 52-59, corresponding to frequencies in the 698-746 MHz band (the "Lower 700 MHz Band").

¹ In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Notice of Proposed Rule Making*, MB Docket No. 03-185 (*rel.*, August 29, 2003) ("*Digital LPTV NPRM*"). The comment and reply deadlines in this proceeding have been set at November 25, 2003 and December 26, 2003, respectively, by publication of the in the *NPRM* in the *Federal Register*. See 68 FR 55566 (September 26, 2003).

In brief, the Rural 700 MHz Band Licensees support the Commission's efforts to promote the availability of digital TV ("DTV") service to rural America and to further progress in the transition to nationwide DTV service.² However, in so doing, the Commission must not license any new digital LPTV stations in the Lower 700 MHz Band. Allowing new digital licensees in the LPTV Service or expanded LPTV operations of any type in the Lower 700 MHz Band, even with secondary spectrum user status, would (1) conflict with the policies that led the Commission to use MSA/RSA licensing for a significant portion of the Lower 700 MHz Band as a way to maximize opportunities for small businesses and rural telephone companies and to ensure the rapid deployment of advanced telecommunications services to all Americans; (2) conflict with the Commission's direct warnings that LPTV operators in the Lower 700 MHz Band must be prepared to cease operations once television Channels 52-59 are reclaimed; (3) unfairly restrict the ability of new Lower 700 MHz Band licensees to provide new services and to take advantage of potential spectrum leasing opportunities in the secondary market as permitted under the Commission's Rules, after these licensees paid for their spectrum at auction; and (4) create public frustration and stranded investment, by encouraging LPTV incumbents and new licensees to expend significant resources and effort to construct digital low-power broadcast facilities, when LPTV operations can be forced to shut down or relocate to another channel on relatively short notice. The creation of this "squatter" situation would be unsound public policy, and would make it that much more difficult for the nascent 700 MHz auction winners to bring new services to the public.

² See, e.g., News Release, "FCC Begins Process to Bring Digital TV to Rural America" (*rel.* August 6, 2003).

Instead, the Rural 700 MHz Band Licensees believe that the Commission can best promote the availability of digital TV in rural America by adopting policies and rules that encourage full power broadcasters in all markets to complete their transition to DTV at the earliest possible date. Digital LPTV operations should be restricted to “core” broadcast channels (channels 2-51), and then, only if the FCC and full-power broadcasters can be certain that such LPTV operations will not impede or delay the DTV transition. Clearing the entire 700 MHz band (698-806 MHz) of all full power and low power broadcasters, in rural as well as urban markets, should be the Commission’s first priority if it is seeking to promote the benefits of advanced wireless services and digital TV to rural America.

I. STATEMENT OF INTEREST

Thirteen (13) of the seventeen (17) Rural 700 MHz Band Licensees listed in Attachment A were successful bidders in one or both of the FCC’s recent auctions for Lower 700 MHz Band licenses (Auction No. 44 and Auction No. 49), and each is currently (or in a matter of days expects to become) a Lower 700 MHz C-Block licensee.³ Four of the companies were participants in Auction No. 49 by way of a joint bidding agreement. Together, the Rural 700 MHz Band Licensees hold licenses for forty-three (43) markets covering more than 5.5 million POPs in portions of twelve (12) states, including the entire state of South Dakota.⁴ Because these licensees have expended

³ In this regard, Acumen Technologies, Inc. (“Acumen”), Kennebec Telephone Company, Inc. (“Kennebec”) and Red River Rural Telephone Association, Inc. (“Red River”) were successful bidders in FCC Auction No. 49. Each has timely paid the remaining balance of its winning bid(s) following the Wireless Bureau’s recent announcement that it was prepared to grant these Lower 700 MHz Band licenses. See *Public Notice* Report No. AUC-49 (Auction No. 49) DA 03-3548 (*rel.* November 6, 2003). One of the Rural 700 MHz Band Licensees, Polar Communications Mutual Aid Corporation (“Polar”), has acquired its Lower 700 MHz band license interests in the secondary market.

⁴ Other states in which the Rural 700 MHz Band Licensees currently hold Lower 700 MHz Band C-Block licenses include Arkansas, Colorado, Illinois, Iowa, Louisiana, Minnesota, Nebraska, New Mexico, North Dakota, Texas and Wisconsin.

substantial resources in acquiring their licenses, and because each is now formulating plans to develop its Lower 700 MHz Band spectrum by providing fixed, mobile and/or new broadcasting services as permitted by the Commission's Part 27 Rules,⁵ each has a significant stake in the outcome of this proceeding.

II. THE FCC MUST NOT LICENSE NEW DIGITAL LPTV STATIONS OR PERMIT EXPANDED DIGITAL LPTV OPERATIONS IN THE LOWER 700 MHz BAND

The Commission must not license new digital LPTV stations or permit expanded digital LPTV operations in the Lower 700 MHz Band. As discussed below, the Commission's digital LPTV proposals are based on the faulty premise that new wireless and other primary services are unlikely to operate in rural areas in the near future. Moreover, if the Commission licenses digital LPTV operations on Channels 52-59, it would undercut the entire licensing scheme that the Commission put into place with Auctions No. 44 and 49, pursuant to a Congressional mandate to facilitate advanced services to rural areas on this spectrum. The public interest would be compromised, as would the confidence of bidders in all future auctions as to whether they will actually get what they paid for.

a. The Commission's Digital LPTV Proposals are Based on a Faulty Premise that New Wireless and Other Primary Services Are Not Expected to Operate in Rural Areas in the Near Future

In its *Digital LPTV NPRM*, the FCC suggests that the use of Channels 52-59 would facilitate the digital conversion of existing low power services. In particular, the Commission states that "[t]hese channels could also provide additional opportunities for new digital stations, particularly in rural areas where new wireless and other primary

⁵ See 47 C.F.R. §§ 27.2, 27.10(a).

services may not operate in the near future.”⁶ As an alternative, the FCC suggests that it could permit use of Channels 52-59 only when applicants can demonstrate that no lower channels are available for their digital operations.⁷ The Commission also seeks comment on whether TV channels 60-69 (the “Upper 700 MHz Band”) should also be made available for digital low power service during the transition.⁸

The Rural 700 MHz Band Licensees stand vigorously opposed to any FCC proposal to license any new or modified LPTV operations on television Channels 52-59. The Commission’s premise that new wireless and primary services are unlikely to operate in rural areas in the near future is speculative, not supported by evidence in the record, and simply incorrect. In much of rural America, there are no incumbent full-power broadcasters entitled to protection in the Lower 700 MHz Band. Moreover, in many rural CMA markets there are few, if any, secondary low-power broadcast operations on television channels 53, 54, 55, 58, 59 or 60 (*i.e.*, channels that would raise co-channel or adjacent-channel interference concerns for licensees in the Lower 700 MHz band C-Block). Indeed, each of the Rural 700 MHz Band Licensees conducted due diligence prior to bidding, as instructed by the Commission, to research the nature and extent of existing and potential broadcast encumbrances in the Lower 700 MHz Band.⁹ After reviewing the FCC’s broadcast licensing records, each determined that the Lower 700 MHz Band C-Block and adjacent channels in most or all of their target license areas were unencumbered by protected broadcast operations. Thereafter, each Rural 700 MHz Band

⁶ *Digital LPTV NPRM* at ¶ 29 (*emphasis added*).

⁷ *Id.*

⁸ *Digital LPTV NPRM* at ¶ 30.

⁹ *See, e.g., Public Notice* DA 02-904 “Due Diligence Announcement for the Upcoming Auction of Licenses in the 698-746 MHz Band, (*rel.* April 18, 2002).

Licensee formulated its respective bidding strategy and placed bids in the auctions in reliance on these findings.

Therefore, many of the rural Auction No. 44 and 49 winning bidders are in a position to proceed with their plans for Lower 700 MHz Band networks, and to begin providing service to rural customers as soon as their business plan is completed and suitable equipment is identified and acquired. Presumably, it will be several months or perhaps even years before equipment is available “off the shelf” that offers a full range of services in the Lower 700 MHz Band Service at affordable prices; and it is vital that the band be cleared of broadcast incumbents as soon as possible, so that the larger auction winners can deploy services in major markets, thereby creating the economies of scale that will bring equipment prices down for rural providers. Nonetheless, the Rural 700 MHz Band Licensees are encouraged that equipment is already being developed for a variety of mobile, fixed, broadband and other new operations in the Lower 700 MHz Band. Indeed, dozens of the Lower 700 MHz band licensees and others with an interest in developing this spectrum band participated in a 700 MHz Users Group meeting in Las Vegas on October 28-29, 2003, where they heard presentations from companies including Flarion Technologies, Qualcomm, Lucent, Airspan, Vyyö, Axcera and Alvarion, regarding Lower 700 MHz equipment that they had developed or had plans to develop in the immediate future.¹⁰ Flarion Technologies has operated a test system on the Lower 700 MHz Band spectrum in Reston, Virginia, and the company provided a demonstration of this technology at the National Telecommunications Cooperative Association meeting in Phoenix, Arizona in February 2003.

¹⁰ The 700 MHz Users Group meetings were held on October 28-29 of this year at the Mandalay Bay Convention Center, in conjunction with the Shorecliff Communications 2003 Tower Summit and Trade Show. See <http://www.shorecliffcommunications.com/tower03/default.asp?showid=T021&info=651>

Moreover, a number of Lower 700 MHz Band licensees at the October meeting made presentations about test networks that they were starting to deploy in rural markets where interference with broadcast operations was not an issue. One of the Rural 700 MHz Band Licensees, Polar Communications Mutual Aid Corporation (“Polar”), has a capital budget item for the development of a Vyyö system in the Lower 700 MHz band in rural North Dakota by June 2004. Polar has already commenced the site acquisition and equipment ordering process, and it plans to use the Vyyö system to provide high speed internet access to those subscribers that cannot be reached by Polar’s MDS system, due to line-of-sight issues.¹¹

Therefore, the potential for widespread service offerings in the Lower 700 MHz band is close at hand, and rural America is in the rare position of being able to lead the way, but only if the Lower 700 MHz Band remains free of secondary encumbrances in rural markets. The development of equipment and services in this band remains a work in progress. However, it would be erroneous to justify additional LPTV licensing on the premise that the use of this band for advanced services is unlikely in the near future.

In this regard, the proposal to license new or modified LPTV stations on television Channels 52-59 is squarely at odds with the Commission’s rationale for using Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) as the basis for geographic licensing for a significant portion of the Lower 700 MHz Band – namely, to promote opportunities for a wide variety of applicants, including small and rural wireless providers and to ensure the rapid deployment of advanced telecommunications

¹¹ The planned deployment by Polar points to a valuable use of the 700 MHz spectrum by rural licensees even before full-blown mobile equipment is adapted for this band. Because the 700 MHz band has “over the horizon” propagation characteristics, it can immediately be put into use as a wireless extension of xDSL and MDS service, or as a backbone for WiFi, cellular, PCS and other existing services in areas of rugged terrain.

services to all Americans, as mandated by Section 309(j) of the Communications Act of 1934, as amended (the “Act”). Indeed, when the FCC was considering a delay of the Upper and Lower 700 MHz auctions (Auctions No. 31 and No. 44, respectively) in the spring of 2002, United States Senators representing rural states urged the FCC not to delay the sale of these smaller licenses in Auction No. 44, because “[a] delay of those licenses, in particular, would slow the delivery of spectrum-based services to rural America, and would not serve the public interest.”¹² After denying a request for indefinite delay of both Upper and Lower 700 MHz Band auctions in the spring of 2002, and while the FCC was wrestling with petitions for reconsideration of that decision, Congress intervened and adopted the Auction Reform Act of 2002,¹³ which directed the Commission to move forward with an auction of 734 MSA/RSA licenses in the Lower 700 MHz Band C-Block and 6 Economic Area Grouping (“EAG”) licenses in the Lower 700 MHz band D-Block. Auction No. 44, as reconfigured, began on August 27, 2002, and ended after eighty-four (84) rounds of bidding on September 18, 2002.¹⁴ Given this auction schedule, with many Lower 700 MHz licensees having been licensed for less than one year, and a significant number of others having not yet received their licenses, it should be clear to the Commission that Lower 700 MHz Band licensees have not had an

¹² See, e.g., Letter from Senator Tim Johnson (South Dakota) to the Honorable Michael K. Powell (dated May 23, 2002).

¹³ Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (“Auction Reform Act”); 47 U.S.C. § 309(j)(15)(C)(iv).

¹⁴ Winning bidders in Auction No. 44 were notified that the Commission was prepared to grant their long-form applications and final license payments were submitted in December of 2002. Lower 700 MHz Band Auction No. 49 consisted of 246 C-Block MSA/RSA licenses and 6 D-Block EAG licenses that were not sold in the first auction. This “re-auction” began on May 28, 2003, and ended after eighty-six (86) rounds of bidding on June 13, 2003. Winning bidders in Auction No. 49 were notified that the Commission was prepared to grant their long-form applications on November 6, 2003, with final license payments due last Friday (*i.e.*, by November 21, 2003).

adequate opportunity (and in some cases, any opportunity) to develop their licensed spectrum.

It would be extremely unfair to Lower 700 MHz Band licensees and applicants for the FCC to change the rules in the middle of the game by permitting secondary users to operate on any of the Lower 700 MHz Band channels. These licensees and applicants have invested a significant amount of time, effort and money in securing the exclusive right to provide spectrum-based services in a given geographic area using Lower 700 MHz Band C-Block and/or D-Block channels, and all of them must make significant further investment in order to turn these spectrum rights into a viable business. If the Commission were to allow other individuals or businesses to use these same frequencies on an secondary basis, it would undercut these nascent auction winners, and discourage any future investment in licensed operations using Lower 700 MHz Band channels. Such an effect would be harmful to the Rural 700 MHz Band Licensees, equipment manufacturers, and other entities that have made significant investments and business decisions in reliance on the existing licensing and technical rules, which do not contemplate the expansion and possible indefinite operation of LPTV Services in the Lower 700 MHz Band.¹⁵

The Commission has previously stated that licensing a portion of the Lower 700 MHz Band over small geographic areas “balances the playing field such that small and rural providers will have an opportunity to participate in the auction and the provision of

¹⁵ For similar reasons, rural carriers have opposed the FCC’s suggestions that the Lower 700 MHz Band frequencies be made available for use by unlicensed operators under the Commission’s Part 15 rules. *See Comments of the Rural 700 MHz Band Licensees, ET Docket 02-380 (filed April 17, 2003).*

spectrum-based services.”¹⁶ Allowing digital LPTV systems to be licensed and deployed on Lower 700 MHz channels would clearly upset this balance by placing a “cloud” of incumbency on spectrum that was intended for deployment of advanced telecommunications services. Even if the LPTV operations are given secondary status, these entities may file waiver requests and court challenges that will delay the rollout of new services, and increase costs for the market area licensees. The Commission can avoid this result by restricting digital LPTV operations to core television channels only, and then only if such secondary operations will not impede or delay the full-power DTV transition.

b. Allowing New Digital Licensees in the LPTV Service or Expanded LPTV Operations of Any Type on Television Channels 52-59 Would Be Inconsistent with the FCC’s Warnings to LPTV Licensees About the Dangers of Continued Operations in the Band

When the FCC reallocated television Channels 52-59 for fixed and mobile wireless services, it sought to promote the deployment of new services anticipated for the Lower 700 MHz Band, and it sent clear warnings to the LPTV industry about the dangers of continued operations in band. Changing course in mid-stream and proposing a framework for new and/or expanded digital LPTV operations that includes Channels 52-59 sends a different message, would be inconsistent with these prior warnings, and will result in harm to Lower 700 MHz Band licensees and consumers in rural America.

In its *Channel 52-59 Reallocation Order*, the FCC chose not to expand the protection rights of LPTV with respect to market area licensees in the Lower 700 MHz Band. Instead, the Commission indicated that “LPTV operators in the Lower 700 MHz

¹⁶ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, FCC 01-342, 17 FCC Rcd 1022 (2001) (“*Channel 52-59 Reallocation Order*”) at ¶ 95.

Band must be prepared to cease service once television Channels 52-59 are reclaimed, pursuant to Section 309(j)(14) of the Communications Act, when new licensees (who will have primary status) begin using the band.”¹⁷ In making this determination, the FCC balanced the interests of incumbent LPTV licensees against the interests of primary licensees in the new Lower 700 MHz Band Service. In particular, the Commission stated that “[t]o grant LPTV operations special considerations vis-à-vis new licensees would turn the concept of secondary status upside down and would retard the potential development of new and innovative services.”¹⁸

The Rural 700 MHz Band Licensees believe that the proposal to allow new digital LPTV stations or expanded LPTV operations in the Lower 700 MHz Band, even with secondary spectrum user status, would have the same net effect of retarding the potential development of new and innovative services. Cluttering the Lower 700 MHz band with a whole new group of secondary users is certain to increase start-up and operating costs for new primary licensees, as discussed above.

c. Secondary Licensing of Lower 700 MHz Band Spectrum Would Interfere with the Business Plans of Primary Licensees and Restrict Their Ability to Fully Utilize Their Spectrum

When the Rural 700 MHz Licensees participated in Lower 700 MHz Band auctions and acquired their licenses, each had a reasonable expectation that they would be able to utilize their licensed spectrum to the fullest extent permitted under the Commission’s policies and rules, and that they would be able to begin providing services when and where they deemed fit, in accordance with their business plan. However, the Commission’s instant proposal to allow new digital LPTV licensees and other expanded

¹⁷ Channel 52-59 Reallocation Order at ¶ 28.

¹⁸ *Id.*

LPTV operations on television channels 52-59 would upset these expectations by unfairly restricting a Lower 700 MHz Band licensee's ability to provide new services or engage in spectrum assignment or leasing transactions in the secondary market.

In particular, the Commission's Part 27 Rules allow market area licensees in the Lower 700 MHz Band Service to provide broadcasting services on a primary basis,¹⁹ with powers up to 50,000 watts.²⁰ The FCC envisioned that a broadcast allocation for the Lower 700 MHz Band, in conjunction with its new technical rules, would "support investment in and development of a variety of broadcast-type applications in the band, including two-way interactive services and services using coded orthogonal frequency division multiplex ("COFDM") technology."²¹ Expanded LPTV operations would unfairly restrict the ability of new Lower 700 MHz licensees to pursue new business opportunities, including the provision of broadcast services.

Moreover, the Commission has recently adopted rules that allow licensees to lease all or a portion of their spectrum to other entities, as a way of defraying their expenses while encouraging the more vigorous use of their spectrum.²² If the Commission allows the influx of LPTV operations on the very spectrum that rural carriers purchased at auction, it will inhibit the attractiveness of this spectrum to potential lessees, thereby depriving the rural carriers of a promised business opportunity, and *discouraging* the development of the secondary spectrum market that the Commission has tried so hard to foster in WT Docket No. 00-230. Again, the possibility (if not likelihood) that the market

¹⁹ See 47.C.F.R. §§ 27.2, 27.10 (Permissible Communications, Regulatory Status) (2002).

²⁰ See 47.C.F.R. § 27.50 (c) (Power and antenna height limits) (2002).

²¹ *Channel 52-59 Reallocation Order* at ¶ 15.

area licensee may have to battle through a spate of waiver requests and other attempts by the LPTV licensee to stay on the air will discourage leasing and other secondary market arrangements, since potential lessees will not want to deal with the uncertainty created by this situation. In essence, allowing secondary users to access Lower 700 MHz Band channels without the permission of the relevant license holder effectively eliminates any incentive for third parties to enter into such secondary market transactions.

d. Allowing New Digital Licensees in the LPTV Service or Expanded LPTV Operations of Any Type on Television Channels 52-59 would be Unsound Public Policy

Finally, the Rural 700 MHz Band Licensees believe it would be unsound public policy to encourage incumbents and new licensees in the LPTV Services to expend the significant investment and effort that is necessary to construct and operate digital broadcast facilities, when one or more Lower 700 MHz Band licensees in the area may choose to begin primary licensed operations at any time. The LPTV operations would be forced to shut down or relocate to another channel without any compensation. Moreover, allowing secondary licensing in the Lower 700 MHz Band after licensees had fully paid for their licenses but before these licensees have had a reasonable opportunity to construct their network and commence operations smacks of unfairness, and would likely destroy the confidence of small businesses and rural telephone companies (as well as other prospective bidders) in the integrity of the FCC's auction processes.

Secondary licensing of LPTV Services in the Lower 700 MHz Band is also likely to lead to significant frustration by rural consumers when the Lower 700 MHz Band licensee in its geographic area commences its service, as it is expected to do, and affected

²² See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-230, FCC 03-113, __ FCC Rcd ____ (Released October 6, 2003).

LPTV facilities are forced to cease operations or to relocate to new channels. The loss of service by even a small group of customers that rely on over-the-air service is harm enough on its own, but the Rural 700 MHz Band Licensees submit that few customers in this situation are likely to know or to care about the difference between primary and secondary status, and this is bound to create significant ill will toward the new licensee. In essence, the Commission would force the auction winner to roll out its service in an atmosphere of community resentment, making it more difficult for this nascent service to gain public acceptance. Neither the creation of mistrust by future auction participants nor the fostering of community resentment toward new services would serve the public interest, from a policy standpoint.

III. THE FCC SHOULD NOT LICENSE DIGITAL LPTV LICENSES BY AUCTIONS IN THE LOWER 700 MHz BAND

In the *Digital LPTV NPRM*, the FCC seeks comment on its proposal to license new digital LPTV stations through competitive bidding procedures (*i.e.*, auctions). As discussed above, the Rural 700 MHz Band Licensees urge the Commission not to license new digital LPTV licenses in the Lower 700 MHz Band by any method. Holding auctions to license secondary LPTV operations would only exacerbate the harms described above. As discussed above, there is a very real concern that new, secondary LPTV licensees will fight to remain on the Lower 700 MHz Band spectrum despite their secondary status, thereby causing service delays, litigation costs and possible public relations issues for licensees in the Lower 700 MHz Band. If these new LPTV licensees have to pay for the spectrum, it will only magnify their feeling that they hold a quasi-“property” interest in their license, which must be defended. Moreover, if past LPTV application windows provide any indication, the Rural 700 MHz Band Licensees believe that any auction for new licenses in the LPTV Service is likely to attract a large number

of speculators, who are looking to turn a quick profit by reselling their licenses and who may or may not have any intention of providing service to rural customers. The FCC should not encourage such speculators who may be interested in extorting concessions from market area licensees by dragging their heels on transition, or in selling their LPTV licenses to unsophisticated buyers that do not understand the secondary nature of the grant.

IV. THE FCC SHOULD NOT LICENSE ANY LPTV IN THE CORE SPECTRUM IF THIS WILL DELAY THE FULL-POWER DTV TRANSITION

Finally, the Commission should not license any digital LPTV Services in the television “core” spectrum (channels 2-51) if the effect of such new or modified operations would add delay or add expense to the full-power DTV transition process. While rural licensees in the Lower 700 MHz Band will not suffer interference from new LPTV operations in the core band, they will suffer the potentially harmful effects that unrestricted licensing of LPTV stations in the core spectrum may have on the DTV transition. If LPTV stations occupy the core channels that must be used by existing full-power broadcasters to accomplish their transition to DTV, this transition will be delayed. Such delay will prevent the larger Lower and Upper 700 MHz Band licensees from rolling out service in the major markets that are currently encumbered by full-power broadcast operations. This in turn will delay the mass production and sale of equipment that is vital to make full rural deployment of advanced services affordable. Therefore, the Rural 700 MHz Licensees will be harmed by this outcome, especially if new LPTV operations in the core spectrum are given co-primary status.

Therefore, the Commission must do everything possible to prevent a delay of the DTV transition. In this regard, the Commission should not license LPTV stations in the

core spectrum at any location where it might delay or complicate the relocation of a full-power broadcaster. This means either refraining from the additional licensing of LPTV in the core altogether, or imposing a mileage separation rule that would ensure that any new LPTV operation in the core would be far enough away from any incumbent that may relocate to the affected core channel that no interference would result.


V. CONCLUSION

For reasons stated above, the Rural 700 MHz Band Licensees urge the Commission not to permit new or expanded LPTV operations on the 48 megahertz of spectrum that has recently been reallocated for fixed and mobile services and new broadcast services on a primary basis in the Lower 700 MHz Band; and to ensure that future LPTV licensing in the core spectrum will be done in a way that will ensure that the DTV transition is not delayed.

Respectfully Submitted,

THE RURAL 700 MHz BAND LICENSEES

By:


Harold Mordkofsky
John A. Prendergast
D. Cary Mitchell

Their Attorneys

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830

Filed: November 25, 2003

Attachment A

A list of the rural telephone companies, cooperatives, entrepreneurs and rural telco subsidiary companies that comprise the “Rural 700 MHz Band Licensees” is provided below.

- 3G COMM, LLC
- Acumen Technologies, Inc.
- Allcom Communications, Inc.
- Arvig Communications Systems
- Cameron Communications Corporation
- Dickey Rural Services, Inc.
- Eastern Colorado Wireless Partnership
- First Cellular of Southern Illinois
- Gardonville Cooperative Telephone Association
- Kennebec Telephone Company
- North Dakota Network Company
- Park Region Mutual Telephone Company
- Polar Communications Mutual Aid Corporation
- PVT Networks, Inc.
- Red River Rural Telephone Association, Inc.
- Rothsay Telephone Company
- Webster Calhoun Cooperative Telephone Association